

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MICHAEL W. MATTINGLY, et al.,

Case No. 1:15-cv-781

Plaintiffs,

Dlott, J.

Bowman, M.J.

v.

HUMANA HEALTH PLAN, INC., et al

Defendants.

**REPORT AND RECOMMENDATION**

This civil action is before the Court on Defendants' motion to dismiss Plaintiffs' complaint. (Doc. 10). However, subsequent to the filing of Defendants' motion to dismiss, the Court granted Plaintiff leave to file an amended complaint. As such, Defendants' motion to dismiss is moot. See *Ky. Press Ass'n, Inc. v. Ky.*, 355 F.Supp.2d 853, 857 (E.D.Ky.2005) ("Plaintiff's amended complaint supercedes the original complaint, thus making the motion to dismiss the original complaint moot.") (citing *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir.2000)), *app. dis.*, 454 F.3d 505 (6th Cir.2006).

Because an amended complaint supersedes the original complaint, it is therefore **RECOMMENDED** that Defendants' motion to dismiss (Doc. 10) should be **DENIED without prejudice as moot**. *Drake v. City of Detroit*, 266 Fed. App'x 444, 448 (6th Cir.2008).

/s/ Stephanie K. Bowman

Stephanie K. Bowman

United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981).